

**KITTY HAWK PLANNING BOARD
MINUTES
Regular Meeting, November 14, 2013 – 6:00 p.m.
Kitty Hawk Municipal Building**

AGENDA

1. Call to Order / Attendance
2. Approval of Agenda
3. Approval of Minutes:
 - a. October 17, 2013 - Regular Meeting
4. Administrative Report:
 - a. Kitty Hawk Election Results
 - b. Town Council Action from November 4, 2013 Meeting
5. Subdivision (Preliminary Plat):
 - a. West Village Subdivision, W. Kitty Hawk Road – 30 Lots
6. Zoning Amendment:
 - a. Shoreside Center Outparcels:
 - 5400 N. Croatan Highway, BC-3/BR-1/BR-3 to BC-3
 - 5406 – 5430 N. Croatan Highway, BC-1/BC-3 to BC-1
 - 5440 N. Croatan Highway, BR-1 to BC-1
7. Text Amendment:
 - a. Section 42-360(c)(2)d – Measuring Pier Length
8. Comments:
 - a. Chairman Northen
 - b. Planning Board Members
 - c. Town Attorney
 - d. Planning Director
9. Public Comment
10. Adjourn

1. CALL TO ORDER / ATTENDANCE

Chairman Northen called the meeting to order at approximately 6:03 p.m., followed with roll call by Planner Heard.

PLANNING BOARD MEMBERS PRESENT: Oscar Northen, Chairman / Craig Garriss, Vice Chair
Richard Fagan / Lynn McClean / Jeff Pruitt / Chuck Heath, Alternate / John Richeson, Alternate

STAFF PRESENT: Joe Heard, Director of Planning & Inspections
Starkey Sharp, Serving as Town Attorney for Steve Michael

2. APPROVAL OF AGENDA

Hearing no changes or additions, **the Chair declared the agenda approved as presented.**

3. APPROVAL OF MINUTES:

a. October 17, 2013 - Regular Meeting. With hearing no changes or corrections to the minutes, Chairman Northern declared the minutes approved as submitted.

4. ADMINISTRATIVE REPORT:

a. Kitty Hawk Election Results. Chairman Northern first congratulated two members of the Planning Board for having been elected into the Kitty Hawk Town Council: Vice Chair Craig Garriss and Jeff Pruitt. The Chair stated their service over the years has been valuable input, adding they will be greatly missed and supported by their fellow Board members.

Next, Planner Heard recognized the many, many years of service offered by Mayor Clifton Perry, who will be retiring as mayor and did not seek re-election. Mayor Pro Tem Gary Perry has been elected as the Town's new mayor.

b. Town Council Action from November 4, 2013 Meeting. As a short summary of action taken by Council at its last meeting, Planner Heard brought forward several planning items of interest:

- Council reviewed and called for a public hearing relating to setting standards for "call centers." The public hearing is set for the regular December meeting.
- An ordinance amendment pertaining to building codes was addressed and adopted, as recent changes per the State require specifically referencing appendices to each code. In that it was not a zoning amendment, said issue did not first have to be reviewed by the Planning Board.

5. SUBDIVISION (PRELIMINARY PLAT):

a. West Village Subdivision, W. Kitty Hawk Road – 30 Lots. Planner Heard reviewed with Board members the staff memorandum dated November 14, 2013, regarding a 30-lot subdivision (preliminary plat) for West Village Subdivision on W. Kitty Hawk Road. Staff discussions with the applicant have resulted in presenting a well thought out proposal which has been fine-tuned, although a few issues have been identified which need to be further addressed. Said memo is entered into this record of review:

Proposal

The applicant has submitted an application, preliminary plat, and draft restrictive covenants for the West Village Subdivision. The plat outlines a proposal to re-subdivide four (4) existing parcels totaling 22.31 acres into thirty (30) lots. A new road connecting to Kitty Hawk Road, water line, and underground electrical line would be constructed as part of the subdivision.

Prior Review

- *On September 30, 2013, the applicant and his engineer (Quible & Associates) met with the Planning Director to present a sketch plan outlining the conceptual design for a 32 lot subdivision. As a result of this meeting, the applicant and fire department had further discussions to resolve water line / fire hydrant issues prior to submission of a preliminary plat.*
- *On October 29, 2013, the applicant and his engineer met with Town representatives (Town Manager, Planning Director, Fire Chief, Fire Marshal, and Town Engineer) to conduct a review of the initial preliminary plat for a 32 lot subdivision. Many comments and issues discussed at this meeting have been addressed by the applicant on the current preliminary plat under review by the Planning Board.*

Staff Analysis

Subdivision & Road Names: The proposed names for the subdivision (West Village) and new road (West Village Road) have been reviewed by Town staff and Dare County E-911 to check on similarity with other, existing subdivision and road names. Both of the proposed names were determined to be acceptable.

Zoning: The subject properties are presently wooded, undeveloped, and zoned Village Residential (VR-1). The VR-1 district allows the density of single-family residential development proposed for these properties.

Lot Size: The minimum lot size in the VR-1 district is 15,000 square feet. Lot sizes for the thirty (30) parcels in the proposed subdivision range from 15,024 square feet (0.34 acre) to 87,454 square feet (2.01 acres).

Wetlands: For the purpose of calculating lot size, wetlands defined under the N.C. Coastal Area Management Act (CAMA) are excluded. However, wetlands designated by the U.S. Army Corps of Engineers (USACE) are included in the lot size calculations. If it is determined that certain areas of the wetlands will be classified as coastal marsh (CAMA wetlands), then those areas will have to be subtracted from the calculation of lot size for the affected lots. This could potentially cause a number of lots to fall below the minimum lot size requirements.

UPDATE: On November 7, 2013, the applicant received information from the N.C. Division of Coastal Management documenting the extent of CAMA jurisdiction in the adjoining waterways and wetlands classified as coastal marsh. As small areas of coastal marsh extend onto several of the proposed lots, it was necessary to exclude these areas from the lot size calculations. The applicant's engineer has determined that the boundary line between Lots 7 and 8 will need to be moved slightly to keep Lot 8 as a conforming lot, but all other lots would still be conforming.

A large percentage (over 42%) of the subject property consists of USACE wetlands (9.38 of the 22.31 acres). However, the applicant has proposed to divide the property in such a manner that all of the proposed lots contain an adequate building area.

In order to construct the proposed road and other improvements as designed, the applicant must obtain a permit from the USACE to fill approximately 0.5 acre of wetlands in the areas designated on the preliminary plat.

Road Frontage: Lots must have a minimum road frontage of twenty-five feet (25') on cul-de-sacs and fifty feet (50') in all other situations. All of the proposed lots comply with these standards.

Lot Width: The minimum lot width in the VR-1 district is seventy-five feet (75'), measured at the front building setback line on each parcel. All of proposed lots comply with this standard. Note that Lots 12, 20, 21, 22, and 24 do not meet this requirement at the street front but widen to the appropriate width at the front building setback line.

While reviewing the memo, Planner Heard interjected the Town has approved this type of lot in the past on a number of occasions, as long as there is a suitable building area in the area where the setback is. It is important to note the building setback on those lots is not 25' in the front but further back wherever that lot reaches 75' in width.

Building Setbacks: Minimum building setbacks in the VR-1 district are 10 feet along the sides and 25 feet at the front and rear. All of the minimum building setbacks are properly shown on the preliminary plat. Note that the front setback for Lot 1 is measured from Kitty Hawk Road as this lot will gain access from Kitty Hawk Road rather than West Village Road.

Road Rights-of-Way: The proposed new road meets the standards to be classified as a local residential subdivision street, which is required to have a minimum right-of-way of only thirty feet (30'). However, the applicant has proposed to develop the road to the greater standards of a collector or secondary road. Consistent with these standards, the proposed right-of-way is fifty feet (50') wide with additional road easements five feet (5') in width on both sides of the right-of-way.

Town standards state that the right-of-way for a cul-de-sac must have a diameter of at least 100 feet. The plat appears to show this measurement properly, but does not clearly note the exact dimensions of the cul-de-sac right-of-way.

NOTE: An existing sixty foot (60') wide right-of-way running along much of the western side of the property will be abandoned as part of the proposed subdivision.

Road Width: The proposed road meets the standards to be classified as a local residential subdivision street, which is required to have a minimum road width of only eighteen feet (18'). However, the applicant

has proposed to develop the road to the greater standards of a collector or secondary road. As the proposed West Village Road will not have curbs and gutters, the minimum road pavement width is twenty feet (20'). The proposed road pavement is twenty feet (20') in width (with 3' shoulders) and meets this minimum standard.

As the proposed road is longer than 150 feet, the NC Fire Prevention Code, Appendix D requires a cul-de-sac 96 feet in diameter or other acceptable turnaround to accommodate emergency vehicle maneuvering. The proposed West Village Road has a cul-de-sac 96 feet in diameter at the terminus of the road and complies with this standard.

Road Design: Please review the Town Engineer's comments under Item #4 in Joe Anlauf's letter. To summarize, the proposed road design, particularly the sharp bend in the road around Lots 27, 28, 29, and 30, complies with accepted design standards for a "mountainous" or "hilly" terrain with a 20 m.p.h. designed speed. However, this section of the proposed road does not meet the standards for a "rolling" terrain with designed speed of 25 m.p.h. The topography of the site has slopes that fall within the definitions of both mountainous/hilly and rolling terrains.

NOTE: The Planning Board will need to make an interpretation on whether or not to accept the applicant's proposal that the road be treated as mountainous/hilly terrain, which would allow the proposed tighter curve under a 20 m.p.h. designed speed.

Water Lines: The applicant is proposing to install an eight inch (8") water line to serve the subdivision. This line will connect to the existing six inch (6") Dare County water main running along the west side of Kitty Hawk Road. The Dare County Water Department has conducted a flow test and found the water flow and pressure adequate to serve the proposed subdivision. The Dare County Water Department and NCDENR Division of Public Water Supply must grant approval of the plans and specifications for the water lines.

Several water line features are shown, but unidentified on the plat. The legend on the plat needs to be updated with the symbols and descriptions for bends and tees, gate valves, and any other water line symbols shown on the plat.

Fire Hydrants: The applicant has proposed to install five (5) new fire hydrants within the proposed subdivision. The Fire Department has reviewed the proposed locations of fire hydrants and suggested relocation of the hydrants to better serve the subdivision. The applicant has agreed to make the suggested changes on a revised preliminary plat prior to the Town Council meeting. The Dare County Water Department must also grant approval of the hydrant locations and specifications as part of its review.

Septic: An application has been submitted to the Dare County Environmental Health Department to conduct site evaluations on all 32 lots. All of the proposed lots will be served by individual, onsite septic systems. A septic permit must be obtained from the Health Department prior to the issuance of a building permit for each lot.

Electric Lines: The applicant is proposing to install underground electric lines for the project. Dominion Power will have to approve plans and specifications prior to installation of the lines.

Stormwater Management: The applicant plans to apply for a low density stormwater permit from the NCDENR Division of Energy, Mineral & Land Resources. When issued, it is likely that the conditions of this permit will limit the amount of building area on certain lots. These restrictions must be delineated on the final plat.

Easements: The preliminary plat shows four (4) types of easements in the proposed subdivision:

1. Utility Easement – Each lot in the proposed subdivision is subject to easements for the installation and maintenance of utilities. The width of these utility easements is fifteen feet (15') where abutting roads and five feet (5') along the sides and rear of each property.
2. Road Maintenance Easement - An easement five feet (5') in width extending along both sides of the proposed road is provided for the purpose of road maintenance.
3. Access Easement – As required by the applicant's contract to purchase the subject property, an access easement must be provided to an existing, undeveloped parcel to the south of the subdivision. This easement is only intended to serve one property and would not allow for future subdivision of the adjoining property. The final location of this easement has not been determined, but needs to be referenced by a note on the plat.
4. Pedestrian Access Easement – The northern side of Lot 18 contains a pedestrian access easement from an existing bridge over the canal to West Village Road. This easement appears to be ten feet (10') in width, but its width needs to be noted on the plat.

Potential Conditions of Approval:

- Update the legend on the plat with symbols and descriptions for bends and tees, gate valves, and any other water line symbols shown on the plat.
- Clearly state the right-of-way dimensions of the cul-de-sac.
- The easement granting access to the adjoining property to the south needs to be referenced by a note on the plat.
- The width of the pedestrian access easement on Lot 18 needs to be defined on the plat and added under easements in the notes on the plat.
- A geotechnical report must be prepared by a qualified company as part of the final design for the base course and road. A copy of the final road design submitted to the Planning & Inspections Department for review and approval prior to grading or construction of the road improvements.
- An erosion and sediment control permit must be obtained from the Town of Kitty Hawk prior to clearing/grading activities or installation of any improvements.
- The applicant must obtain a permit from the Army Corps of Engineers for approximately 0.5 acre of fill in the wetland areas designated on the preliminary plat and submit a copy to the Planning & Inspections Department prior to the issuance of an erosion and sediment control permit or any filling activity.
- A copy of the Stormwater Permit from the N.C. Division of Energy, Mineral & Land Resources must be provided to the Planning & Inspections Department prior to the installation of any improvements.
- The Dare County Water Department and NCDENR Division of Public Water Supply must grant approval of the plans and specifications for the water lines. A copy of such approval must be submitted to the Planning & Inspections Department prior to installation.
- All necessary paperwork must be submitted and recorded to properly abandon the existing lot lines and right-of-way.
- A limb height of 13'6" must be maintained over the proposed roadways.
- Addresses must be assigned to all properties.

Comments from Town Engineering Consultant

The Town of Kitty Hawk has retained Joe Anlauf with Anlauf Engineering (Kitty Hawk, NC) as a consulting engineer on all matters relating to this project. Mr. Anlauf's comments on the proposed subdivision are attached.

Land Use Plan

The Town of Kitty Hawk's adopted CAMA Land Use Plan designates the subject parcels as a "Low Density Residential Area" on the future land use map. A "Low Density Residential Area" is defined as a density averaging two (2) units per acre with lots of 15,000 square feet or greater.

The proposed subdivision appears to comply with the stated description for development in a Low Density Residential Area.

Planning Board Action

The Planning Board has been asked to review the proposed preliminary plat for the West Village Subdivision and provide a recommendation to Town Council.

Should the Board decide to recommend approval of the preliminary plat, the motion could be worded in the following manner:

"I recommend approval of the preliminary plat for the West Village subdivision that divides off W. Kitty Hawk Road into thirty (30) lots, subject to the following conditions: [LIST CONDITIONS]."

Directions to the Subject Property

From Kitty Hawk Post Office, N. Croatan Highway & Kitty Hawk Road, drive approximately 2.7 miles west on W. Kitty Hawk Road. Pass the Twiford Road intersection. The proposed subdivision is located on the left approximately 1,000 feet (0.2 mile) after you pass over the bridge. Carrenda Lane is located just beyond the subdivision.

Planner Heard explained the designation of "preliminary plat" is to present a design and plan for what the property owner would have approval to do. Nothing is yet on the ground, nor are the lots flagged individually. If everything falls in place, the developer would install

all improvements and return for review of a final plat by the Board and Council. After Council approval of the final plat, the sale of lots could occur.

The Planner then indicated that a minor change with one of the lot lines will be identified later by the applicant, as it deals with wetlands and meeting minimum lot size requirements.

Present for the review was Joe Anlauf, consulting engineer for the Town, and Gordon Jones, the applicant. Also representing the applicant were Warren Eadus and Michael Strader, both with Quible Engineering.

Chairman Northern inquired if the Planner has seen a topography map of the subject area, citing how the applicant used existing typography as the determining factor for road design. Heard indicated a topography map is available, that the applicant's engineer would be presenting aspects of the map and the rationale used for the chosen route.

Fagan asked if it would be germane to include the conditions (see top of page 5 of these minutes) as part of the Board's motion, and Planner Heard replied that if the Board so desires a reference could be made for including these conditions, as well as any other conditions the Board deems necessary. Next, Fagan inquired if the applicant should indicate a willingness to comply with said conditions, and Heard recognized such would be appropriate.

At this time, the floor was opened to the applicant and his representatives. Gordon Jones stated he currently has the subject property under contract for purchase and, as part of the due diligence period, trying to put the subdivision together and presenting the proposal. Much thought has been put into the plan by the applicant's planners and engineers, with Jones commenting the subject property is unique with its rolling hills, hardwood trees and pines, and wetlands. The planning attempted to use what is there to blend with the topography.

With noting that work on this project began about a year ago when dealing with the topographical survey, Eadus stated he is a professional geologist in North Carolina, which is his role with Quible & Associates, making him well versed with being able to address wetlands and CAMA concerns. The preliminary plat approval is being sought so the applicant can move forward, although there are permits which need to be secured and further work to be done once the preliminary plat is reviewed and acted upon. Since the staff report was prepared, Eadus indicated, the N.C. Division of Coastal Management (NCDCM) met with him onsite, and adjustments have been made to the canal widths as well as to the lot line for Lots 7 and 8 in order to meet the Town's criteria for wetlands and lot size.

The subject property is a high ridge made up of knobs, with some steep slopes, and there is vegetation of various size. Eadus indicated there are wetlands on both sides of the ridge and deep canals on both sides, which was considered when planning the roadway. The road was designed with a 20 mph standard, desiring that motorists would drive slow and not speed through the community. Homes are proposed to be clustered around some of the major curves in order to prevent a cookie-cutter appearance. The curvature of the road also allows less disturbance of the land. The proposed roadway complies with NCDOT standards and would accommodate a large-size fire truck. A geotechnical report will be performed to make sure the road's design has been done accurately.

Upon question by Chairman Northern, the applicant's representative indicated no problem with the conditions as stated by staff. Consideration has been made of the actual building footprint on each of the lots, Eadus indicated, and a soil suitability test has been conducted. The Chair directed attention to Lot 6, with an explanation given by Eadus that although two areas could

be used, access is proposed off West Village Road. In noting the presence of wetlands at Lot 6, the Chair commented about how the road curve probably could not be straightened in order to bring the speed limit up to 25 mph, and Eadus noted the topography of the wetlands has made the roadway a challenge, as well as the lots. The engineer then offered there should be no problem with homes being built and using septic systems.

The Chair opened the floor for further questions by the Board members. VC Garriss clarified the applicant has addressed the concern with wetlands and lot size, with Eadus noting one lot line had to be moved, which has been approved by NCDOT. As far as the posted speed limit, VC Garriss stated he is not in favor of going higher than 20 mph, as motorists tend to drive above the posted speed limit.

Fagan indicated he is curious as to what makes the proposed road specifically different from a residential road, and Strader explained, basically, the road was designed to a higher standard above and beyond the normal residential road – designed to be a secondary collector road. In essence, it provides a larger right-of-way and the pavement width is adequate, in accordance with NC 3-T Subdivision Roads, the minimum desired criteria, which is higher for a collector road than for residential. Fagan then inquired what is meant by "collector," if it refers to trucks and maintenance, and Strader replied it is the terminology by NCDOT for public safety vehicles and refuse trucks to navigate, turn around and come out. Planner Heard added a collector road is a road that collects traffic off other roads; in other words, it is a road where other roads would come into it and is why it has a higher design standard because it tends to carry more traffic.

Fagan then asked about the separation of standards for the Army Corp of Engineers versus NCDOT, and it was explained by the applicant's representatives the difference between the Coastal wetlands and the Army Corp wetlands is based on the hydraulic connection to the sound and the presence or absence of coastal species of plants. The use of rolling hills is a design guide, with three different classifications of terrain by which a road is designed. There is no clash or disagreement between the entities' standards.

Pruitt referenced the staff memo information regarding road design, which notes the topography has slopes which fall within the definition of both mountainous hilly and rolling terrains, and the engineer's report notes the terrain is classified as hilly, making it appropriate to have the 20 mph speed limit with the proposed radius. Planner Heard clarified the designation is made not against the Town's ordinance but according to the NCDOT standards. The Town's ordinance does not differentiate a road designed to the 20 mph standard.

It was also noted by the Planner to Pruitt that an easement will be provided for access to Lot 5 and Lot 6.

In response to a procedural question, Planner Heard reiterated to the Chairman the steps for the preliminary plat moving forward to the Council and a later separate final plat Planning Board review and approval after improvements are made.

Hearing no further discussion, the Chair called for a recommendation. **VC Garriss moved to recommend approval of the preliminary plat for the West Village Subdivision that divides off W. Kitty Hawk Road into thirty (30) lots, subject to the conditions that have been listed by staff and approved by the applicant. Upon call for the vote, the motion carried unanimously, 5-0.**

6. ZONING AMENDMENT:

a. Shoreside Center Outparcels:

5400 N. Croatan Highway, BC-3/BR-1/BR-3 to BC-3
 5406 – 5430 N. Croatan Highway, BC-1/BC-3 to BC-1
 5440 N. Croatan Highway, BR-1 to BC-1

This zoning amendment proposal to rezone split-zoned properties at 5400, 5406, 5416, 5424, 5430 & 5440 N. Croatan Highway was introduced and outlined briefly by the Board at its last meeting. Property owners have been informed of the Board's discussion and thoughts in an effort to reach a consensus; however, there are some related zoning issues that need to be further addressed. This is not a time sensitive issue, and should the Board feel the need for additional information or is uncomfortable with moving the matter forward to Council, the amendment could be placed on the next month's agenda for further review and discussion.

Before covering what was discussed at the Board's last meeting and the context of the proposed rezoning, Planner Heard noted that he received some information from Ralph Calfee, a local engineer. Just prior to the meeting, Calfee submitted a cover letter and copies of two site plans with suggested changes to the proposed Shoreside Center zoning. These documents were distributed to the Board members and Town Attorney immediately before the discussion of this issue. Calfee has previously served as a Planning Board member and has also served as the engineer for many of the property owners in the Barrier Island / Shoreside Center development. His personal knowledge of the history of the project is valuable input for the Board to consider. At a time after the staff memorandum for this agenda item had been distributed to the Board, Calfee had contacted Heard and shared some valid points which deserve consideration.

Planner Heard then covered the basic items of the rezoning proposal and a summary of comments by the property owners. The staff memorandum dated November 14, 2013 is entered into this record of review:

<u>Property Address/Use</u>	<u>Parcel ID Number</u>	<u>Property Owner</u>
5400 N. Croatan Hwy Wal-Mart	986720806122 (portion)	TW and W at KHNC, LLC
5406 N. Croatan Hwy Gateway Bank	986720806636 & 986720807731	Billy G. Roughton (owner) Gateway Bank & Trust (lessee)
5416 N. Croatan Hwy BB&T Bank	986720804529	Shoreside OP 3, LLC (owner) BB&T Bank (lessee)
5424 N. Croatan Hwy Carawan Seafood	986720802553	Eckard Land Holding Co.
5430 N. Croatan Hwy Vacant	986720801438	Shoreside OP 2, LLC
5440 N. Croatan Hwy ABC Store	986720709413 & 986720806122 (portion)	Dare County ABC Board

Proposed Zoning/Background Information

This rezoning proposal is part of a larger effort by the Town of Kitty Hawk to clarify the Town's zoning map by matching zoning district boundaries to existing property lines with the approval of the affected property owners. In this case, the affected property and business owners did not submit an application to have their property rezoned, but have discussed the matter thoroughly with the Planning Director and expressed their support for the proposed zoning amendment to the Beach Commercial (BC-1) district. The property owners and all surrounding property owners are notified of the proposal just like a traditional rezoning application.

With subdivisions, lot combinations, zoning amendments, and development occurring over the years, the zoning of the subject properties has become a complex issue resulting in the properties being shown

as split-zoned on the Town's official zoning map. These parcels are proposed to be rezoned in order to clarify the zoning of the properties if/when development, redevelopment, or other zoning issues arise in the future.

The subject properties are surrounded on the east, south, and west sides by property belonging to the Shoreside Center, a shopping center containing Wal-Mart, Harris Teeter, and a number of additional commercial tenants. The Shoreside Center properties are zoned Community Shopping Center (BC-3). A portion of this development is also subject to a Planned Commercial Development (PCD) zoning district. The Kitty Hawk Estates neighborhood is located further to the west. Across Croatan Highway to the north is The Marketplace at Southern Shores shopping center, which is located in the Town of Southern Shores and zoned commercially.

5400 N. Croatan Highway:

Current Zoning: Community Shopping Center (BC-3)/Beach Residential (BR-1)/Beach Residential (BR-3)

Proposed Zoning: Community Shopping Center (BC-3)

This property is approximately 18.25 acres in size and presently contains a Wal-Mart store 127,460 square feet in size. As shown on the attached zoning map, a great majority of the property is presently zoned Community Shopping Center (BC-3), but a strip approximately 150 feet in width along the western side of the property appears to be zoned Beach Residential (BR-1). A small portion at the southern end of this strip is presently zoned Beach Residential (BR-3). All documentation in the Town's files states that the entire property was zoned Community Shopping Center (BC-3) during its development and subsequent changes, but for some reason, the Town's current zoning map does not reflect this fact.

As required in the BC-3 district, the westernmost 100 feet of this strip is a buffer area from the adjoining Kitty Hawk Estates neighborhood and cannot be developed with buildings or parking. A private access easement 50 feet in width containing Cypress Knee Trail is also located within the BR-1 zoned area. A relatively narrow strip of the developed Wal-Mart property also appears to be within the BR-1 zoned area.

The Town is considering the rezoning of this parcel to bring the developed portion of the property into compliance and clarify the zoning of the property if/when development, redevelopment, or other zoning issues arise in the future. As the 100 foot buffer is only required in the BC-3 district (not BR-1), this rezoning is also necessary to enforce the buffer protecting the adjoining residential neighborhood.

5406 N. Croatan Highway:

Current Zoning: Beach Commercial (BC-1)/Community Shopping Center (BC-3)

Proposed Zoning: Beach Commercial (BC-1)

This property is approximately 39,500 square feet (0.91 acre) in size and presently contains Gateway Bank. The adjoining parcel to the east is considered part of this development, bringing the total size of the property to 51,100 square feet (1.17 acres). The property is presently split-zoned by a zoning line parallel to Croatan Highway that travels 100 feet in depth through a majority of the property, then turns east into Croatan Highway (shown on the attached zoning map). A majority (approximately 70%) of the property is zoned Community Shopping Center (BC-3). The remainder of the property is zoned Beach Commercial (BC-1). The property gains its sole access from an internal traffic circulation road for the Shoreside Center. When developed for the bank in 2005, it was noted that the property was split-zoned BC-1/BC-3. It appears that the site plan was reviewed and approved under BC-3 district standards. The proposed rezoning of this parcel is intended to include the adjoining, narrow parcel to the east that is under the same ownership and functions as part of the gateway Bank property.

5416 N. Croatan Highway:

Current Zoning: Beach Commercial (BC-1)/Community Shopping Center (BC-3)

Proposed Zoning: Beach Commercial (BC-1)

This property is approximately 50,000 square feet (1.15 acres) in size and presently contains BB&T Bank. The property is presently split-zoned by a zoning line parallel to Croatan Highway that travels 100 feet in depth through the property (shown on the attached zoning map). 50% of the property is zoned Community Shopping Center (BC-3) and 50% is zoned Beach Commercial (BC-1). The property can be accessed from an internal traffic circulation road for the Shoreside Center and a right-turn only access drive in and out of Croatan Highway. When developed for the bank in 2005, it was noted in the staff report that the property was zoned BC-1. It appears that the site plan was reviewed and approved under BC-1 district standards.

5424 N. Croatan Highway:**Current Zoning:** Beach Commercial (BC-1)/Community Shopping Center (BC-3)**Proposed Zoning:** Beach Commercial (BC-1)

This property is approximately 20,000 square feet (0.46 acre) in size and presently contains Carawan Seafood (built in 1948). The property is presently split-zoned by a zoning line parallel to Croatan Highway that travels 100 feet in depth through the property (shown on the attached zoning map). 50% of the property is zoned Community Shopping Center (BC-3) and 50% is zoned Beach Commercial (BC-1). Developed decades before the surrounding Shoreside Center, Carawan Seafood doesn't comply with all of the Town's current development standards, but is considered a legal, nonconforming property ("grandfathered"). The property can only be accessed from Croatan Highway.

5430 N. Croatan Highway:**Current Zoning:** Beach Commercial (BC-1)/Community Shopping Center (BC-3)**Proposed Zoning:** Beach Commercial (BC-1)

This property is approximately 28,500 square feet (0.65 acre) in size and presently undeveloped. The property is presently split-zoned by a zoning line parallel to Croatan Highway that travels 100 feet in depth through a majority of the property, then turns east into Croatan Highway (shown on the attached zoning map). A majority (approximately 70%) of the property is zoned Community Shopping Center (BC-3). The remainder of the property is zoned Beach Commercial (BC-1).

5440 N. Croatan Highway:**Current Zoning:** Beach Residential (BR-1)**Proposed Zoning:** Beach Commercial (BC-1)

This property is approximately 22,000 square feet (0.51 acre) in size and presently contains a Dare County ABC store. As shown on the attached zoning map, the property is presently zoned Beach Residential (BR-1). It appears that confusion over the zoning of this property occurred when Cypress Knee Trail was moved further to the east in 2005 to straighten out the road and help facilitate the development of this property. Documentation shows that the ABC store was subsequently developed under the assumption that the property was zoned Community Shopping Center (BC-3), when in fact, it appears that all or at least most of the property was actually zoned Beach Residential (BR-1).

The proposed rezoning of this parcel is intended to include an area on the adjoining Shoreside Center property on which the ABC store has an easement for use as part of the parking lot for the ABC store. The Town is considering the rezoning of this parcel to bring the current use of the property into compliance and clarify the zoning of the property if/when development, redevelopment, or other zoning issues arise in the future.

Staff Analysis

Zoning Districts: Sections of the Zoning Ordinance outlining the permitted uses and development standards for the three main districts in question (BR-1, BC-1 & BC-3) are attached for your review.

When considering which zoning district is most appropriate for the subject properties, staff discussed the options with the affected business and property owners as well as the Planning Board. Staff prepared the attached sheet comparing the BC-1 and BC-3 zoning districts to summarize the differences between the two districts.

Zoning/Development History: The attached sheet entitled "Shoreside Center: Zoning/Development Background Information" summarizes the history of zoning and development in the area of the subject properties.

Land Use Plan

The Town's adopted land use plan is an important document to consider as it is intended to help guide the pattern and standards of development in the Town. While consistency with the plan is certainly desirable, it is important to note that approval of a rezoning request is not legally required to be consistent with the Town's adopted land use plan if Town Council decides that other factors justify the need for a zoning change.

The Town of Kitty Hawk's adopted CAMA Land Use Plan designates the eastern four of the subject properties as a **Commercial, Shopping, and Working Area** and provides the following description for this classification:

"Commercial, shopping, and working areas include areas that primarily encourage the concentration of commercial facilities in clusters or group developments and to provide readily accessible shopping

facilities and will provide for the proper grouping and development of commercial facilities to serve permanent and seasonal residents and the general public."

A portion of the Dare County ABC store property and strip along the western side of the Wal-Mart property are designated as "**Rights of Way, Easements, Canals, Ponds, Creeks, Etc.**" At the time the land use plan was developed, a portion of this property was in the easement for Cypress Knee Trail and another portion dedicated as a buffer area from the adjoining Kitty Hawk Estates neighborhood.

As part of its review, the Planning Board is asked to determine the consistency of this zoning amendment proposal with the adopted CAMA land use plan.

Planning Board Action

The Planning Board has been asked to provide the Town Council with a recommendation regarding the proposed zoning amendment to the subject properties at 5400, 5406, 5416, 5424, 5430 and 5440 N. Croatan Highway.

Should the Board decide to recommend **APPROVAL** of the proposed rezoning, the motion could be worded in the following manner:

"I recommend approval of the application to rezone the entirety of the properties at 5406, 5416, 5424, 5430 and 5440 N. Croatan Highway to Beach Commercial (BC-1) and the remaining portion of the property at 5400 N. Croatan Highway to Community Shopping Center (BC-3). The Board has found these zoning amendments to be consistent with the Town's adopted land use plan."

Additional justification for the recommendation can also be added.

Directions to the Subject Property

From Kitty Hawk Post Office, N. Croatan Highway & Kitty Hawk Road, drive approximately 2.8 miles north, then west on N. Croatan Highway (Hwy 158). The series of properties under consideration are located on the left, just past McDonald's, in front of the Shoreside Center.

At the Board's last meeting, a consensus suggested that property owners for the front series of outparcels (Gateway Bank, BB&T, Carawan Seafood, and a large vacant parcel) consider a BC-1 district, noting the development standards in that district were actually more flexible than they would be under a BC-3 district.

All property owners have indicated concurrence with the recommendation. For the record, Planner Heard pointed out that a portion of the property consisting of Gateway Bank actually has a separate parcel – a grassed area which runs along the side. With said area included, the BC-1 rezoning would cover everything west of the first entrance all the way to Cypress Knee Trail on the western end. It does not include McDonald's, as that property was developed under a BC-3 zoning district as part of the other parcels.

Heard noted the ABC Store property was not zoned commercially at all, and at the time of development, it was assumed to be zoned BC-3 per documents during the project review. The proposed zoning would rectify that error. A black line runs through the front of the Shoreside Center property. Everything to the north of that line is part of the property owned by Dare County ABC Board. The property to the west is actually an easement, granted to the ABC Store to accommodate a large portion of the parking lot (which is part of the Shoreside Center/Wal-mart property). Calfee's letter indicates said portion of the ABC Store development should be zoned BC-3 consistent with original zoning, with the property owner asking that the zoning follow the property line. The development is a nonconforming development under the scenario of either BC-1 or BC-3 zoning. Basically, it appears that this occurred as a mapping error.

Calfee's information outlines sections of the site plan, and Planner Heard explained confusion has occurred with the zoning over time. The BC-3 district has a PCD overlay which relates to the Barrier Island Development, and at the back of the Shoreside property where Cypress Knee Trail curves towards Barrier Island, there is a septic area for the Barrier Island office included within the BC-3. For whatever reason, the correct zoning designation of this area has not been shown on the zoning map. Further reference was made to a color-coded site plan prepared by Calfee

which highlighted other areas which were covered under the PCD overlay. A sketch has been made to scale where the zoning should go, although it does not follow the property line.

Discussion between the Planner and Chairman Northern commented the zoning designation not being on the map is primarily a clerical error and can be corrected. Consensus was given by Board members the issue appears to be simply a clerical-type matter which can be cleaned up.

With hearing no further input, **Fagan moved to recommend approval of the application to rezone the entirety of the properties at 5406, 5416, 5424, 5430 and 5440 N. Croatan Highway to Beach Commercial (BC-1) and the remaining portion of the property at 5400 N. Croatan Highway to Community Shopping Center (BC-3), that the Board has found these zoning amendments to be consistent with the Town's adopted land use plan. The motion carried unanimously, 5-0.**

For the record, the Planner asked if the intent of the motion is to include the corrections which Calfee has suggested, and the Chairman indicated, "yes."

7. TEXT AMENDMENT:

a. Section 42-360(c)(2)d – Measuring Pier Length. Planner Heard noted this text amendment has come about from a discussion with a property owner desiring to extend his pier into the bay. In that the property owner has a valid point, Heard said he is presenting this application on behalf of the Town and the property owner.

The Planner's staff memorandum dated November 14, 2013 is entered into this record of review:

Proposal

To allow the length of piers and related marine improvements to be measured from the furthest waterward point of the normal high water mark of the bay or sound adjoining the property, no matter where the pier is actually located on the property.

Staff Analysis

Presently, the Town of Kitty Hawk measures the length of a pier from the mean high water mark at the point where the pier is located on the subject property. In cases where the property owner wishes to extend his/her pier as far out into the bay or sound as possible (which is a great majority of the cases), this standard encourages the property owner to locate his/her pier over the marsh that extends the furthest out into the bay or sound. Staff from the Town of Kitty Hawk and N.C. Division of Coastal Management has observed that this practice can lead to the deterioration of the marshes over which the pier crosses. In an attempt to reduce damage to our coastal marshes, the proposed text amendment would create an allowance for property owners to locate piers in areas with narrower marshes, while allowing the length of the pier to extend its full length into the bay or sound.

Key Points:

- *The intent of the proposed text amendment is to discourage the practice of constructing piers over the widest areas of coastal marshes in order to maximize the distance that these piers can extend into the bay or sound. These piers cause disturbance and shade out larger areas of marsh, which can lead to failure of the marsh in those covered areas.*
- *It is the intent of the proposed text amendment to give property owners the option of locating piers over narrower areas of marsh, thus minimizing the environmental impacts, without any penalty to the property owner regarding the distance that these piers can extend into the bay or sound.*
- *The proposed amendment would not allow a property owner to extend a pier any further than he/she could under the current standards.*

- The proposed amendment would allow a pier to extend out to that maximum distance from anywhere along the property.

NOTE: The attached drawings will help you visualize the difference between the current and proposed standards for measuring pier length. [These drawings can be obtained through the Planner's office.]

Background Information

State law authorizes municipalities to establish an area of extraterritorial jurisdiction (ETJ) for the purpose of setting development standards in designated areas abutting, but outside of, a municipality's boundary. On June 27, 1994, the Kitty Hawk Town Council established an ETJ area extending one mile westward into Kitty Hawk Bay and the Currituck Sound. At the same time, the Town Council adopted standards for uses and development within the ETJ area.

On December 6, 1999, the Kitty Hawk Town Council adopted a text amendment that established standards for the construction of piers in the Sound Waters zoning district, now found in the Kitty Hawk Zoning Code, Section 42-360(c)(2)d.:

(2) Private, community or commercial piers and boat slips, subject to continuing compliance with the following requirements:

d. The pier or marine improvements shall not extend further waterward of the mean high-water mark of the bay or sound than provided as follows:

Private pier and boat slips	100 feet
Community pier and boat slips	200 feet
Commercial pier and boat slips	200 feet

Prior to the establishment of these standards, the N.C. Division of Coastal Management was the only agency responsible for the issuance of permits for piers. With the adoption of standards for piers, the Town of Kitty Hawk established its authority to review and permit piers located within the Town's ETJ area.

Rationale for Maximum Pier Length Standards

At its meeting on July 22, 1999, the Kitty Hawk Planning Board first discussed the adoption of standards for maximum pier length. Concerns expressed included the aesthetic appearance of piers, piers blocking views of other residents, and boaters running into longer piers. The shallow depth of water and presence of aquatic vegetation in some areas were mentioned as reasons for needing an adequate pier length. At one point, a pier length of 200 feet was suggested. It was also noted that the difference in water depth from 100 feet to 200 feet was minimal.

On October 4, 1999, Kitty Hawk Town Council held an initial public hearing on proposed standards for piers, which included restrictions on maximum pier length. After a couple of public comments, the Council members decided to send the ordinance back to the Planning Board to add a grandfather clause for existing piers and clarify a few minor details. The minutes from the Town Council meeting at which the pier length ordinance was adopted (December 6, 1999) do not mention any additional discussion or provide additional rationale for the pier length restriction.

Consistency w/ Land Use Plan

The Town's adopted Land Use Plan contains the following goals, policies, and objectives relating to the subject:

POLICY #6b: Kitty Hawk supports continued management of the Currituck Sound, Kitty Hawk Bay, and Albemarle Sound shorelines to protect and preserve the natural resources of the water and shoreline, relying primarily on the CAMA permit program and the Areas of Environmental Concern (AEC) designated under the CAMA program.

OBJECTIVE #6a: Adopt and apply development policies that balance protection of natural resources and fragile areas with residential and economic development.

OBJECTIVE #6c: Develop policies that minimize threats to life, property, and natural resources resulting from development located in or adjacent to hazard areas, such as those subject to erosion, high winds, storm surge, flooding, or sea level rise.

As part of its recommendation, the Planning Board is asked to make a determination whether the proposed text amendment is or is not consistent with the adopted CAMA Land Use Plan.

Planning Board Action

The Planning Board is asked to provide the Town Council with a recommendation regarding the text amendment proposal.

Should the Board decide to recommend approval of the proposed text amendment, the motion could be worded in the following manner:

"I recommend approval of the proposed text amendment that redefines how pier length is measured in Kitty Hawk. The Board has found this proposal to be consistent with the Town's adopted land use plan."

Property owner Steve Kessler was present to participate in this discussion.

Some of the thought behind the extension concept is to get the end of the pier into deeper water. A specific example was cited by the Planner which has occurred at the property beside Kessler, a permit issued just one year ago for a 100' pier (behind The Promenade). A walkway has been built to reach the pier, and the pier itself extends over coastal wetland and marsh area. What has happened in the one-year period, due to a great degree to shading, is the marsh grass no longer receives sun and has eroded back.

Kessler desires to build a pier out as far as his neighbor's but wants to maintain the marsh and see it flourish, but the Town has no way of allowing for such. Referencing the depiction included with the staff memorandum, the Planner's comments continue:

"Our proposal, what we would be looking at, is taking a measurement from that furthest waterward, and we'll define it as a normal high water mark, which is the term that the Division of Coastal Management uses, and it could be 100' out from that. At that point, there would be a line so it couldn't go out any further than it can right now, but you could then go and put the pier anywhere you want it on that lot as long as it did not go past that line."

"You could end up building a pier, in this case, let's say there's a 30' difference, and that would be a pretty significant example, but you could build a 140' pier that began in the lower area where it wasn't disturbing much of the marsh. We had a very minimal environmental disturbance, and build it out to the distance you could otherwise build it if you build it over the marsh."

"So, the intent of this is not to create a greater allowance, not to allow piers to extend further out into the sound or bay than they can presently, but to give a property owner, if they so desire, it would be their choice, but if they so desire, they could put a pier ... they wouldn't be penalized for putting a pier in a place that causes less environmental disturbance."

Each property would be its own measurement, the Planner would explain to the Chair, and the 100' would have to be measured from the furthest waterward point of each individual lot.

The Planner welcomed input from the Planning Board, noting the draft ordinance was completed rather quickly.

Kessler provided pictures of the pier he is currently building. Also, pictures of the neighbor's pier and marsh area were shown.

Kessler commented about his commercial fisherman background, having been taught to respect the marsh. When having permission to measure his neighbor's pier, the neighbor explained the marsh point was 15' further out and much wider at the time the dock was built. Now, approximately 60% of the marsh point remains on the north side of the dock and none of it remains on the south side. Kessler said he hopes the Town would support an amendment to current pier ordinances which would encourage homeowners not to build over marsh points by giving them the distance they would have gained by building over the marsh points.

VC Garriss applauded Kessler's efforts to protect and save the marsh. The request seemed confusing at first, Garriss offered, but the drawings cleared up the concept proposed. Fagan echoed the comments by the Vice Chair.

Fagan moved to recommend approval of the proposed text amendment that redefines how pier length is measured in Kitty Hawk, that the Board has found this proposal to be consistent with the Town's adopted land use plan. Upon call for the vote, the motion carried unanimously, 5-0.

8. COMMENTS:

a. Chairman Northen. A brief inquiry was made about the Board's agenda for next month, as to whether there will be any applications to review. Board members would be given notice if the meeting is cancelled.

As to VC Garriss and Pruitt moving forward to serve with the Town Council, they will be sworn into office on December 2, 2013, at the Council meeting. The Chair stated the Board will greatly miss their service, and on behalf of all members, Chairman Northen said it has been a joy to work together on the Board.

b. Planning Board Members. Pruitt thanked everyone for "putting up with me" and having good discussions, adding that he looks forward to working with the Planning Board in the future. He concluded his statement with a word of thanks for everyone letting him serve with them.

VC Garriss said he has thoroughly enjoyed working with the Planning Board and the experience.

c. Town Attorney. Nothing further was addressed by the Attorney.

d. Planning Director. Planner Heard announced and invited everyone to join in on a reception to honor Mayor Clifton Perry early on the evening of the Council meeting. The official meeting will begin at 6:00 p.m. with the current Council opening the meeting and then turn their seats over to the newly elected members.

9. PUBLIC COMMENT

There was no public input.

10. ADJOURN

With no other items, **the Chair declared the meeting adjourned at approximately 7:30 p.m.**



Oscar Northen, Chairman

Attachments: 0

Minutes Transcribed and Respectfully Submitted By: Betty Moore Williams